TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 67.

THE AMERICAN EXPRESS COMPANY AND R. M. COFFIN, PLAINTIFFS IN ERROR,

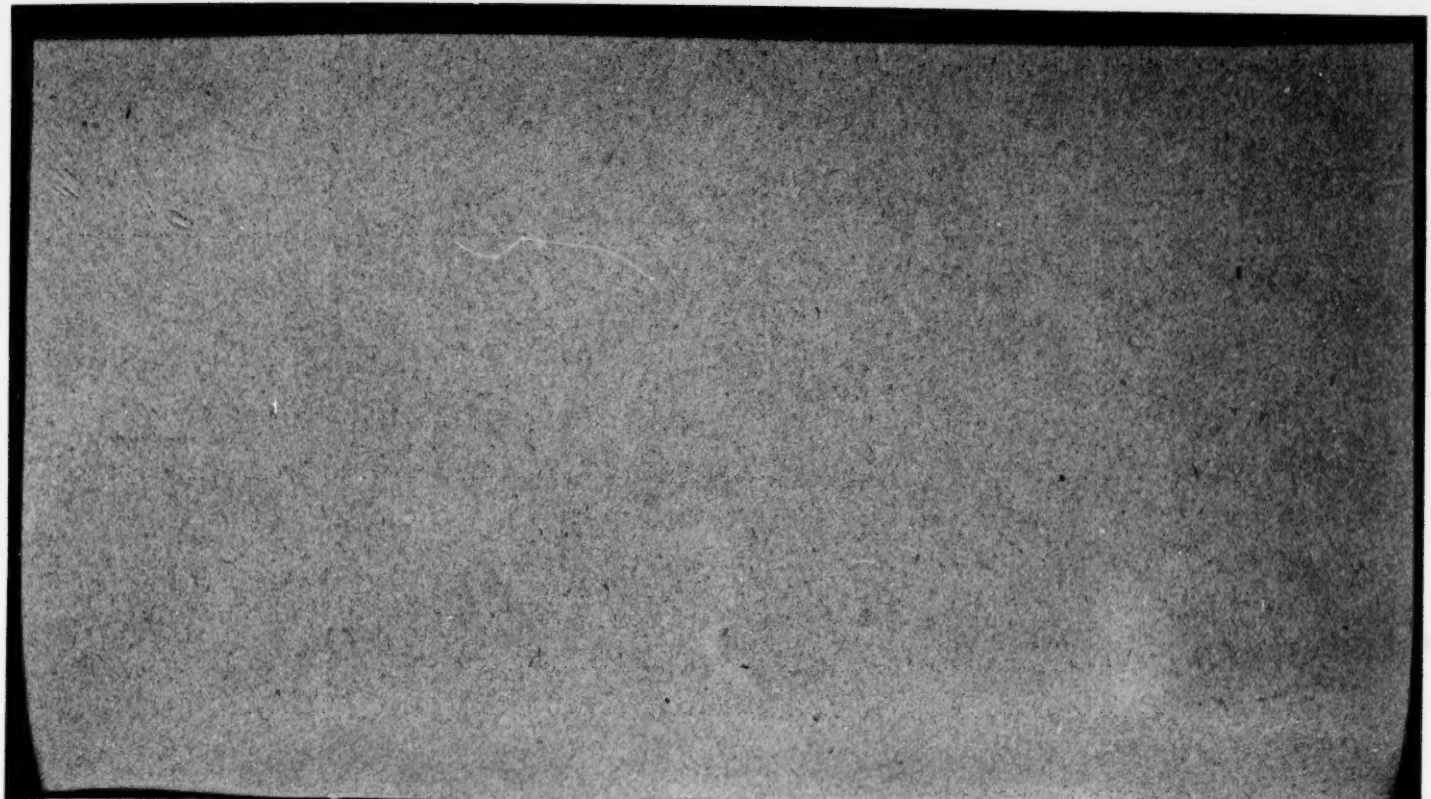
vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED JUNE 20, 1904.

(18,985.)



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a Supreme Court of the State of Iowa.

THE AMERICAN EXPRESS COMPANY and R. M. COFFIN and CERTAIN Intoxicating Liquors, Plaintiffs in Error,
against
THE STATE OF IOWA, Defendant in Error.

1 In the Supreme Court of Iowa, May Term, A. D. 1901.

THE STATE OF IOWA, Appellant,
vs.
THE AMERICAN EXPRESS COMPANY and R. M. COFFIN, Appellees. } At Law.

Appeal from Tama district court, Hon. G. W. Burnham, judge.

C. B. Bradshaw for appellant.
J. W. Willett for appellee.

Appellant's Abstract.

2 On the 31st day of March, 1900, an information was filed in the office of A. W. Guernsey, a justice of the peace, in Tama township, Tama county, Iowa, charging the defendants above named with keeping intoxicating liquors in said county with intent to sell the same in violation of law, which information is in words and figures as follows:

STATE OF IOWA, *Tama County,* } *ss:*

I, B. A. Hall being duly affirmed, depose and say that I am a resident of Tama county, Iowa; that at the time the original information was filed in this cause, I had reason to believe, and did believe, and still believe that certain intoxicating liquors, to wit: whisky, brandy and wine were at the time said information was filed, kept in the office of the American Express Company at the city of Tama, in said county of Tama, which office is kept in the building occupied by the defendant R. M. Coffin as a drug store in said city of Tama, which intoxicating liquors were at the time aforesaid kept by said American Express Co. and the said defendants Coffin and Crossman, as its agents, in packages addressed to S. L. Hartsock, Geo. Everhard, Burt Anderson, W. E. Pauley and other persons to this informant unknown, which intoxicating liquors were at the time aforesaid, by the American Express Company and its Iowa agents, kept and intended by said defendants and each of them to be sold in violation of the laws of Iowa.

B. A. HALL,

Duly affirmed before A. W. Guernsey, J. P.
1—67

Thereupon the said justice of the peace issued a warrant to W. T. Hollen, a constable in aforesaid county, directing him to
3 search the premises described in said information, and to seize the packages and liquors with the vessels containing them, and to keep the same until final action thereon.

The said constable on the 2nd day of April, 1900, returned said warrant into court showing that pursuant thereto he had searched the premises, found and seized four packages of intoxicating liquors in the office of the American Express Company, in Tama, Iowa, in the building occupied by R. M. Coffin as a drug store and as the office of said American Express Company; and that he then held said liquors subject to the further order of the court.

Due notice having been given by the said justice to the defendants herein of the seizure of said intoxicating liquors, and the said defendants having been duly summoned to appear before the said justice on the 9th day of April, 1900, to show cause why the liquors and vessels seized as aforesaid should not be forfeited and condemned, the cause came on for hearing before said justice on the 9th day of April, 1900, C. B. Bradshaw appearing as attorney for the plaintiff and Willett & Huber appearing as attorneys for the defendants.

The defendants at the same time filed in said cause the following

Answer.

First count.

Now come the defendants in the above entitled cause and for answer to the substituted information filed herein, deny each and every allegation and statement thereof, except as may be hereinafter admitted or otherwise denied.

4 Defendants admit that said R. M. Coffin is the agent of said American Express Company at Tama, Tama county, Iowa.

Defendants admit that the prosecuting witness, B. A. Hall, on the 2nd day of April, A. D. 1900 was and still is a resident of Tama county, Iowa.

Second count.

Further answering said substituted information, these defendants state that The American Express Company, one of the defendants herein is a foreign corporation organized under the laws of the State of New York, for pecuniary profit with its principal office located in New York city, N. Y.

That the defendant R. M. Coffin is the local agent at Tama, Tama county, Iowa for his co-defendant American Express Company, and has been such agent for many years last past.

That the defendant W. P. Crossman is an employé of his co-defendant R. M. Coffin at said Tama, and clerks in the drug store

of said Coffin thereat, and sometimes in the absence of said Coffin handles the express of the defendant American Express Company thereat.

That the defendant American Express Company, the corporation aforesaid, is a common carrier, and as such common corrier is engaged in the rapid transportation of merchandise, personal property and other articles and commodities, in the State of Iowa, and interstate between the several States.

That on or about the 29th day of March, 1900, the defendant American Express Company, as a common carrier received from John Cullom & Co., consignors at the city of Rock Island in the State of Illinois, four boxes said to contain merchandise,
5 marked by consignors direct to the several consignees as follows to wit: One box to "W. E. Pauley, Tama, Iowa," one box to "Geo. Everhart, Tama, Iowa," one box to "Link Hartsock, Tama, Iowa," and one box to "Bert Anderson, Tama, Iowa," and said boxes and each of them were then and there billed by the defendant express company at Rock Island, Illinois, for said consignors at their request direct to said several consignees at Tama, Iowa, C. O. D. $3 00 on each package not including the cost of transportation.

That said packages or boxes and each of them were securely nailed and packed and neither of these defendants have any knowledge or information of what they or either of them contain.

That said packages or boxes and each of them were received by the defendant American Express Company as common carriers on said 29th day of March, 1900, from said consignors at said Rock Island, Illinois, for transportation interstate from said Rock Island, Illinois to said Tama, Iowa, consigned to the said several parties, W. E. Pauley, B. Anderson, Link Hartsock and G. Everhart, $3.00 C. O. D. to each, at Tama, Iowa, with express charges of forty-five cents on each package. That said packages were received at Tama, Iowa, March 31, 1900, by the defendant R. M. Coffin as the agent of the defendant express company, from said company, and were by said Coffin as such agent taken to his place of business, in his drug store in said Tama, Iowa, which place is the local office of the defendant American Express Company at said Tama, and said packages and each of them were still in transit, in the possession of the defendant express company and their agent the defendant R. M. Coffin, acting
for said company at their said office in Tama, Iowa, and
6 had never been delivered to consignees or either of them at the time they were seized by the officer in this proceeding and same have never been delivered to consignees or either of them.

That the defendant W. P. Crossman has not now and never had any interest in the property in controversy, nor was the same, or any of it, ever in his possession or under his control, except that same may have been left in the office of the defendant express company at Tama, Iowa, at some time while he the defendant W. P. Crossman was in charge of the store wherein said office is located, as the drug clerk and employee of the defendant Coffin. That the defend-

ant American Express Company, as a common carrier, has a lien for the express or transportation of said property from Rock Island, Illinois, to its office in Tama, Iowa, of forty-five cents on each box or package in controversy, no part of which has ever been paid.

That there are charges against each package or box in controversy in the sum of $3.00 each as a C. O. D. which the defendant express company is obligated to consignors to collect, from the several consignees, before delivering same or either of them, no part of which C. O. D. charges has ever been paid.

That these defendants nor either of them have any interest in the sale of the merchandise or contents of said several boxes, but the sole and only interest of defendants or either of them in the premises is in the performance of the duties, in the exercise of the privileges allowed them by law as common carriers engaged in transportation in the States of Illinois and Iowa, and other States interstate, and the property in controversy is yet in transit interstate, never having been delivered to consignees, and none of said property is kept
7 by defendants or either of them with intent to sell the same, and the seizure herein made is unlawful.

Wherefore defendants ask that the said property in controversy and each item or package thereof may be ordered returned to the defendant American Express Company or its agent at the local office of said company in Tama, Iowa, where same was seized; that the lien of the defendant express company of forty-five cents per package on each package herein for transportation of same may be protected; that the obligation of the defendant express company to collect and pay the consignors of said property $3.00 per package before delivery to consignees may be respected and protected, and that the costs herein may be taxed to the prosecuting complainant, and that these defendants may be dismissed without costs with judgment accordingly.

WILLETT & HUBER,
Attorneys for Defendants.

Thereupon the plaintiff and defendants having agreed upon the facts filed the following stipulation as to the facts to be considered on the hearing:

Stipulation.

It is hereby stipulated by the parties to the above entitled cause,

1st. That the defendant, The American Express Company, is a foreign corporation as alleged in defendants' answer.

2nd. That said defendant express company has not nor has it at any time had or held a permit or other authority to sell intoxicating liquors in Tama county, Iowa.

8 3rd. That the defendant R. M. Coffin is a registered pharmacist and holds a permit to sell intoxicating liquors for the purposes authorized by the laws of Iowa, but that he makes no

claim that such permit authorizes any delivery of intoxicating liquors by him as agent of said express company which may be received by him as the agent of his company, and consigned to parties who may call for the same at the office of said company, nor is the delivery of such liquors by him for the said express company in any wise conducted under the regulations and laws prescribed by the State of Iowa for the sale of intoxicating liquors by him as a registered pharmacist and permit holder.

4. That at the time the packages described in defendants' answer, which are the same packages seized under the warrant of seizure in this cause, were received for transportation by said express company, neither the defendant express company nor its agents or employees knew or had any knowledge that the said packages contained intoxicating liquors, nor did said express company, its employees or either of the other defendants Coffin and Crossman know or have any knowledge of the actual contents of said packages seized herein until after the seizure thereof.

5. It is conceded that said packages and each of them do contain intoxicating liquors of not less than one quart each, and that such liquors are in the original packages in which they were delivered to the defendant express company as a common carrier in the State of Illinois for transportation to Tama, Iowa.

6. That the charges of three dollars on each package, mentioned in defendants' answer is no part of the charges for transportation and no part of the compensation of said defendant express company for transporting the same, and that the said sum of three dollars is the purchase price of the goods contained in each package respectively, and that said express company is bound under its contract to collect for the shipper of said packages the said sum of three dollars on each package before delivering the same to the consignee and to transmit to said shipper the sum of three dollars on each package.

9

7. That the place of delivery of said packages to consignees is at the office of the said American Express Company in Tama, Tama county, Iowa, of which office the defendant R. M. Coffin is in charge as agent and at the time of the seizure herein none of said packages had been delivered to the consignees or either of them. That said packages and each of them were shipped by consignors to consignees on their orders, given to the traveling agent of consignors at Tama, Iowa, and by him sent in to consignors subject to their approval and shipment thereunder.

8. That in case the hearing of this cause should be on demurrer of plaintiff to defendants' answer, each of the above admitted facts shall be considered in connection with the answer as fully and have the same effect in law as if alleged in said answer or made a part thereof.

C. B. BRADSHAW,
Attorney for Plaintiff.
WILLETT & HUBER,
Attorneys for Defendants.

Thereupon the said cause was submitted on the information, answer of defendants and the stipulation aforesaid, and by consent of parties the court took the said cause and its submission under advisement until April 12, 1900, at which time the court rendered its decision and found that the packages of liquor seized under the warrant issued and in the custody of the officer, were each and all kept by the said defendants, The American Express Company and R. M. Coffin, for the purpose of being sold in violation of law, and rendered judgment that the said liquors and the vessels containing the same and now in the custody of the officer, be forfeited, and rendered judgment against said defendants for the costs of the proceeding, to all of which orders and judgments the defendants severally excepted and gave notice of appeal to the district court.

And afterwards, to-wit, on the 16th day of April, 1900, the defendants duly perfected their appeal to the district court of Tama county, Iowa.

Afterwards, to-wit, the defendants filed in the district court an amendment to their answer in words and figures following:

Amendment to Answer.

The defendants American Express Company and R. M. Coffin amend the second count of their answer herein and aver, that under the facts in this case as shown by the pleadings and stipulation on file, a Federal question arises under the Constitution of the United States, and laws of Congress, which they now affirmatively plead to-wit: the rights of the defendants engaged in interstate commerce as common carriers, and of the power of the State of Iowa over goods in transit from one State to another; and under the same the defendants insist that the liquors and packages in controversy
11 are not subject to seizure and destruction as claimed by the prosecution.

Wherefore defendants demand the return of the property seized herein and judgment for costs.

J. W. WILLETT,
Attorney for Defendants.

And afterwards, to-wit, on the 16th day of January, 1901, the said cause was fully submitted to the said district court, both parties waiving a jury, and the said cause was submitted on the information and answer of defendants and the written stipulation herein before set out, no other evidence being offered or introduced by either party, the stipulation aforesaid being all the evidence offered or received on the trial and submission of said cause.

Whereupon by consent of parties, the said cause was to be decided in vacation, and judgment entered as of the last day of the December term of the district court for the years 1900.

And afterward, to-wit, on the — day of February, 1901, the Honorable G. W. Burnham, judge of said district court, filed with the clerk of said court his decision of said cause in writing, finding that the said liquors were wrongfully seized and ordered that they be returned to the express company and that the State pay the costs of this prosecution, to all of which orders and judgment the State excepted, which exceptions were duly entered of record; that the said judgment was entered and rendered as of the last day of the December term 1900, to-wit, January 16th, 1901.

And afterward, to-wit, on the 23d day of March, 1901, the plaintiff perfected its appeal from the said judgment by duly serving upon the said defendants and their attorneys in the court below a
12 notice of appeal to the supreme court of Iowa, and by serving upon the clerk of the district court of Tama county, Iowa, a notice of such appeal to the supreme court of Iowa, and by securing to his satisfaction the fees required or that may be required for any record or transcript in said cause.

C. B. BRADSHAW,
Attorney for Appellant.

The cost of printing this abstract is $12.00.

I hereby certify that I am the attorney for appellant in this appeal and that the cost of printing this abstract is as above stated.

____ ____,
Attorney for Appellant.

Assignment of Errors.

The appellant, while not conceding that assignments of errors are required for a review of this cause on appeal, for the purpose of avoiding controversy as to such question, assigns the following errors:

1. The court erred in holding that the liquors seized were exempt from seizure under the interstate commerce provision of the Federal Constitution.
2. The court erred in its finding and judgment that the liquors were wrongfully seized.
3. The court erred in ordering the liquors seized to be returned to the defendant express company.
4. The court erred in rendering judgment against the plaintiff for costs of the proceeding.

C. B. BRADSHAW,
Attorney for Appellant.

13 (Copy.)

Filed Oct. 30, 1902.

In the Supreme Court of Iowa.

Appeal from Tama District Court, G. W. Burnham, Judge.

STATE OF IOWA, Appellant,
v.
AMERICAN EXPRESS COMPANY, R. M. COFFIN, and CERTAIN INTOXICATING LIQUORS.

Certain intoxicating liquors in the possession of the defendant Coffin as agent for the American Express Company at Tama were seized, and by the judgment of a justice of the peace were condemned and their destruction ordered, on the ground that they were being kept by defendants to be sold in violation of law. On appeal to the district court the liquors were ordered to be returned to the express company on the finding that said liquors were wrongfully seized, and from this judgment the State appeals.

Charles W. Mullan, attorney-general and C. B. Bradshaw, Chas. A. Van Vleck, ass't att'y gen. for appellant.
J. W. Willett and J. C. Cook, for appellee.

Per Curiam:

The facts out of which this controversy arose were as follows: Certain packages of intoxicating liquors, each containing one quart, were, in pursuance of orders received by John Cullom Co., dealer in intoxicating liquors at Rock Island, Illinois, delivered to the defendant express company to be transported to Tama and there to be delivered to the consignees named, on the payment of $3.00 and express charges on each package so shipped. The defendant express company had no knowledge that such packages contained intoxicating liquors, if that fact is material, and transported them to Tama, where they were then seized in the possession of the defendant Coffin as its agent. The simple question is whether the delivery of these packages to consignees would have constituted sales of the liquors at Tama, for if so, such liquors were held for the purpose of illegal sale in the State and were subject to forfeiture; or whether, on the other hand, the sales were made at Rock Island, and the liquors were in the possession of the defendant company merely for transportation and delivery to the consignees in pursuance of
14 such completed sales, for under this state of facts the liquors were in possession of the express company in the discharge of its functions in carrying on interstate commerce, and could not be seized under the State law, unless it be found that in accepting the

goods, and attempting to collect the purchase price, the company was not acting as a carrier simply, but was undertaking the performance of an act prohibited by our law.

If the act of the carrier in assuming to collect the purchase price be considered as a sale of the goods, or if it be found that such transaction on its part is not freed from the operation of our laws, by reason of being but a lawful step incident to interstate commerce, then the liquors should have been condemned. Whether a C. O. D. transaction should be deemed an absolute sale on the part of the vendor with a provision for with-holding delivery until actual payment, so as to preserve a lien for the price, or as an executory contract of sale which is not completed until actual delivery to the buyer, has been the subject of much diversity of opinion. See cases cited at pp. 300 and 301 of 17 Am. & Eng. Ency. of Law 2nd edition.

If the question were *res integra* in this State, a majority of the court, as now constituted, would be inclined to the view that under such a shipment, the carrier is the agent of the buyer for the purposes of transportation and of the seller for the purpose of retention of possession and collection of the purchase price, and that as a necessary corollary, title passes to the buyer on delivery to the carrier.

But the question is foreclosed in State *vs.* U. S. Ex. Co. 70 Ia. 271, wherein it is said: "They (the liquors) were carried by the express Co. and held by it for delivery to the parties on payment of the purchase price. They were therefore the property of the consignors and the express company was the agent of the consignors with authority to transfer the title to the property upon payment of the purchase price. The property was therefore contraband &c." It was also held in that case that want of knowledge on the part of the express company of the character of the goods was entirely immaterial. That opinion, which was written by Judge Rothrock, has stood unquestioned until this case, and several others like it, recently reached this court and would not no doubt at this time be challenged
15 but for the opinion in Rhodes *vs.* Iowa, 170 U. S. 412. That case in no manner militates against the conclusion reached in the express company case for the same court which announced that opinion in O'Neill *v.* Vermont, 144 U. S. 323; 36 L. Ed. p. 450 that the determination of the character of a C. O. D. transaction did not involve a Federal question and sustained not only a condemnation of liquors under precisely the same state of facts as appear in the case now before us, but also affirmed a judgment of conviction against an agent connected with the sale. Our 70 Iowa case is not without support in other jurisdictions. See State *vs.* O'Neill, 58 Vt. 140; State *vs.* Goss 6 Atl. Rep. 829; People *vs.* Shriver 23 Fed. 134; U. S. *vs.* Cline 26 Fed. 515; U. S. *v.* Chavallier, 170 Fed. 434; Baker *vs.* Bonecuauld, 1 Daly N. Y. 24; State *vs.* Wingfield, 115 Mo. 428; Crabb *vs.* State, 15 S. E. Rep. (Ga.) 455; Dunn *v.* State 8 S. E. Rep. Ga. 806; State *v.* Four Jugs, 2 Atl/ Rep. 586/; Wagner *v.* Hallack, 3 Colo. 176.

We are now asked to change the rule to the end that our prohibi-

tory liquor laws, passed in the exercise of the police power of the State, may be rendered less irksome, and express companies be allowed not only to transport liquors into the State, which of course they may do—but also collect the purchase price for the vendors. The baneful effect of such a decision is easily imagined. Every one knows that an over-ruling of the express company case would be followed by the establishment in every community of places for the sale of intoxicants which would be quite as harmful and free from regulation and restraint as were the "original package saloons" before the enactment of the Wilson bill.

The purpose and intent of that act is quite generally understood. That it was not intended to interfere with legitimate acts of transportation of property between the States, nor to prevent a resident of this State from shipping liquors into it from another State for his own consumption and use, is freely admitted. But it is just as clear to our minds that it was not the intention of Congress to authorize a carrier to engage not only in the transportation of property, but to act as an agent for the seller in completing the sale and collecting the purchase price.

Supported as we are in our position by respectable authority, *forefited* by the thought that we are upholding the policy of
16 this State toward the traffic in intoxicants, and fully believing that doctrine announced while not supported perhaps by the weight of judicial authority, is one which will do much good and no harm, we are constrained to adhere to it, on the broad ground of *stare decisis*, which is one of the safe guards of our judicial system. This conclusion relieves us from the necessity of considering the other question as to whether or not the goods are protected by reason of the commerce clause of the Federal Constitution. See the O'Neill case *supra*. However, some of the members of the court would reach same result, had it been found that the title to the property passed when delivered to the carrier in the State of Illinois. Conceding that to be true, they are of the opinion that the transaction was not in any fair sense interstate commerce, protected by the Constitution of the United States from State regulation. The express company in effect engaged in the business of selling through agents in this State at retail, intoxicating liquors, shipped by it for that purpose from the State of Illinois.

This was a mere device, as it seems to us, to evade the police laws of this Commonwealth; and that the doctrine of "original packages," or of freedom of interstate commerce, does not apply to a business of this character.

In assuming to collect the purchase price, and to hold possession until the price was paid, it was in no proper sense engaged in interstate commerce. Others of the court are of a contrary opinion; they think that the collection of the purchase price was a mere incident to the transportation of the goods, and that the case should be ruled by Rhodes *vs.* Iowa *supra*, in the event we were constrained to over rule the express company case 70 Iowa. None of us, as be-

fore observed, are disposed to question that decision at this time, and it follows that the judgment of the district court should be and is reversed.

[Endorsed:] No. —. In the supreme court of Iowa. The State of Iowa, appellant, *vs.* The American Express Company *et al.* appellees. Copy of opinion.

17 In the Supreme Court of Iowa, October Term, 1902.

Now on this 30th, day of October 1902 the following among other proceedings were had towit:

STATE OF IOWA, Appellant,
vs.
AMERICAN EXPRESS Co., R. M. COFFIN, and CERTAIN Intoxicating Liquors. } #21661.

Appeal from Tama district court.

In this cause the court being fully advised in the premises, file their written opinion reversing the judgment of the dist. court.

It is therefore considered by the court that the judgment of the court below be and it is hereby reversed and the cause is remanded for further proceedings (if any be required) in the dist. court in harmony with the opinion of this court and that a writ of *procedendo* issue accordingly.

It is further considered by the court that the appellee pay the costs of this appeal, taxed at $55.75 and that execution issue therefor.

18 The Supreme Court of the United States.

THE AMERICAN EXPRESS COMPANY and R. M. Coffin and Certain Intoxicating Liquors, Plaintiffs in Error,
against
THE STATE OF IOWA, Defendant in Error. } Error to the Supreme Court of the State of Iowa.

Assignment of Errors.

And now come the plaintiffs in error herein and file the following assignment of errors upon which they will rely in the Supreme Court of the United States in the above entitled case.

There is manifest error in the record and proceedings in said case and in the decision of the supreme court of Iowa, as follows:

I.

The supreme court of Iowa erred in that it refused to find that sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897 and the seizure of the four packages containing intoxicating liquors and the proceedings against the same under the said sections of the Code of Iowa, were and are repugnant to the eight- section of article I of the Constitution of the United States, in respect of the power to regulate commerce among the several States.

II.

The supreme court of Iowa erred in that it refused to find that the four packages seized and condemned, were not subject to seizure and confiscation under sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897, for the reason that said four packages were delivered to the American Express Company, as a carrier, at Rock Island in the State of Illinois, to be transported by said company from Rock Island in the State of Illinois to Tama in the State of Iowa, and there delivered to consignees named, and were, at the time of such seizure, still in the possession of the American Express Company at its local office at Tama, Iowa, in the original packages in which the same were shipped from the State of Illinois, awaiting delivery to the consignees.

19 III.

The supreme court of the State of Iowa erred in that it refused to find that the four packages containing intoxicating liquors, which were seized and condemned, were exempt from such seizure and confiscation under the eighth section of article I of the Constitution of the United States, for the reason that said four packages were delivered to the American Express Company, as a carrier, at Rock Island in the State of Illinois, to be transported by said company from Rock Island in the State of Illinois to Tama in the State of Iowa, and there delivered to consignees named, and were, at the time of such seizure, still in the possession of the American Express Company, at its local office at Tama, Iowa, in the original packages in which the same were shipped from the State of Illinois, awaiting delivery to the consignees.

IV.

The supreme court of Iowa erred in holding that the four packages containing intoxicating liquors, which were seized and condemned, were kept by the American Express Company to be sold, and were therefore, subject to seizure and confiscation under sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897, for the reason that said four packages were held by the American Express Company, as a carrier only, the same having been received by said company at Rock Island in the State of Illinois, to be transported

by said company from Rock Island, in the State of Illinois, to Tama, in the State of Iowa, and there delivered to consignees named, upon the payment by them to the said company of the sum of three dollars upon each of said packages in addition to the charges for the transportation thereof and that said four packages, at the time of such seizure, were still in the possession of the American Express Company as such carrier, at its local office at Tama, Iowa, awaiting delivery to the consignees.

V.

The supreme court of Iowa erred in holding that, at the time the said four packages were seized, the American Express Company was not acting as a common carrier simply, but was undertaking the performance of an act prohibited by law.

20

VI.

The supreme court of Iowa erred in holding that, in receiving the said four packages so to be transported, the American Express Company was an agent of the consignors with authority to transfer the title to the said four packages upon payment of the purchase price.

VII.

The supreme court of Iowa erred in holding that, under the circumstances of said case, the American Express Company held the said four packages for sale within the said State of Iowa, or that a delivery thereof, within said State of Iowa, by the American Express Company, upon receipt of the said sums, in accordance with the terms of the said shipment, would have been a sale within said State of Iowa, it being conceded that the American Express Company and its agents had no knowledge that the said four packages contained intoxicating liquors.

VIII.

The supreme court of Iowa erred in holding that the absence of knowledge on the part of the American Express Company and its agents that the said four packages contained intoxicating liquors was immaterial, upon the question of the liability of the said company, to the judgment rendered.

IX.

The supreme court of Iowa erred in not holding that the seizure of the four packages containing intoxicating liquors and the proceeding against the same under sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897, were in violation of the rights of the American Express Company under the eighth section of article I of the Constitution of the United States, in respect of the power to regulate commerce among the several States.

X.

The supreme court of Iowa erred in holding that no Federal question was involved in this case.

XI.

The supreme court of Iowa erred in not ordering the said four packages containing intoxicating liquors, which were seized and condemned, to be returned to the American Express Company and R. M. Coffin.

21 XII.

The supreme court of Iowa erred in not rendering judgment against the State of Iowa for the cost of the proceeding prosecuted against the four packages seized and condemned.

XIII.

The supreme court of Iowa erred in ordering judgment in favor of the State of Iowa and against the American Express Company and R. M. Coffin.

JAMES W. WILLETT,
Attorney for Plaintiff in Error.

[Endorsed:] In the Supreme Court of the United States—The American Express Company, R. M. Coffin and Certain Intoxicating Liquors, plaintiffs in error against The State of Iowa defendant in error Filed Jun- 10 1903 Jno. C. Crockett clerk supreme court. James W. Willett, attorney for pl'ffs in error.

22 Know all men by these presents, that we, the American Express Company, an unincorporated joint stock association, as principal, and the Lawyers Surety Company of New York, as surety, are held and firmly bound unto the State of Iowa in the full and just sum of five hundred dollars, to be paid to the said State of Iowa, its certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of May, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a session of the supreme court of the State of Iowa in a suit depending in said court, between the said State of Iowa as appellant and The American Express Company, and R. M. Coffin and Certain Intoxicating Liquors, as appellees a judgment was rendered against the said American Express Company and R. M. Coffin and Certain Intoxicating Liquors, and the said American Express Company and R. M. Coffin having obtained a writ of error and

filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Iowa citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said American Express Company and R. M. Coffin shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

AMERICAN EXPRESS COMPANY, [SEAL.]
By JAMES C. FARGO, *As President.* [SEAL.]
THE LAWYERS' SURETY COMPANY [SEAL.]
OF NEW YORK,
By GEORGE E. HAYES, *Vice-President.*

Attest:

[Seal of the Lawyers' Surety Company of New York.]

LOUIS E. KUSTER,
Acting Secretary.

Sealed and delivered in presence of—

WILLIAM C. FARGO,
Ass't Sec'y Am. Ex. Co.
H. G. HINTON,
As to L. S. Co.

Approved:

DAVID J. BREWER,
Associate Justice of the Sup. Court U. S.

Approved by—

[Seal of U. S. Circuit Court, South. Dist. of New York.]

JOHN. A. SHIELDS,
Clerk Circuit Court of the United States, Southern District of New York.

[Endorsed:] Filed Jun- 10 1903 Jno. C. Crockett clerk supreme court.

23 In the Supreme Court of Iowa.

THE STATE OF IOWA, Appellant,
against
THE AMERICAN EXPRESS COMPANY and R. M. COFFIN and Certain Intoxicating Liquors, Appellees. } At Law.

Petition for Allowance of Writ of Error.

To the Honorable David J. Brewer, associate justice of the Supreme Court of the United States:

The petition of the American Express Company and R. M. Coffin respectfully shows:

That the American Express Company is an unincorporated joint stock association engaged as a common carrier, in the transportation of goods, wares and merchandise between the various States of the United States, with general offices in New York city, having also, among other places, a local office in the township of Tama, Tama county, Iowa. That R. M. Coffin was on the 31st day of March, 1900, and for a long time prior thereto had been, the local agent of the said American Express Company at Tama, Iowa.

That on the 31st day of March, 1900, an information in the name of the State of Iowa and against the said American Express Company and R. M. Coffin was filed in the office of A. W. Guern-
24 sey, a justice of the peace in and for Tama township, Tama county, Iowa, in pursuance of which information, four packages in the possession of the American Express Company at its local office at Tama, which were said to contain intoxicating liquors, were seized, and a suit was thereupon commenced and prosecuted in the name of the State of Iowa against the American Express Company and R. M. Coffin, to condemn the said four packages and to cause them to be destroyed in pursuance of and under sections 2413, 2414, 2415, and 2416 of the Code of Iowa of 1897, copies of which sections are hereto attached and marked Exhibits A, B, C, and D, and made part of this petition.

That said cause came on to be tried, and the parties thereto duly appeared therein, and submitted said cause to the said justice's court, and that thereafter, the said justice's court rendered its decision therein, whereby it found that the said four packages seized under the warrant issued upon the information, and in the custody of the officer, contained intoxicating liquors, and were each and all kept by the said American Express Company and R. M. Coffin, for the purpose of being sold in violation of law, and rendered judgment that the said liquors and the vessels containing the same be forfeited, and also rendered judgment against the said American Express Company and R. M. Coffin for the costs of the proceeding.

That the said American Express Company and R. M. Coffin duly excepted to the order and judgment of the said justice's court, and appealed therefrom to the district court of Tama county,
25 Iowa. That, thereafter, said cause came on to be heard before said district court and was duly submitted to the said district court, and thereafter, judgment was entered in the said district court, whereby it was adjudged that the said four packages were wrongfully seized, and ordered that they be returned to the American Express Company and R. M. Coffin, and that the State of Iowa pay the costs of the prosecution. That the State of Iowa thereupon appealed from the said judgment and order of the said district court, to the supreme court of the State of Iowa, and an abstract of the record of said cause was filed in the said supreme court of Iowa at the May term thereof, 1901, by the appellant therein, which abstract contains the whole record of the said cause as submitted upon the said appeal to the supreme court of Iowa, a certified copy of which is annexed to this petition and made a part hereof, and marked Exhibit E. That the said cause came on to be heard before the supreme court of Iowa, and was duly argued and submitted to said court, and thereafter, on the 30th day of October, 1902, the supreme court of Iowa rendered its decision, whereby it reversed the decision of the district court of Tama county, Iowa, and in pursuance of said decision, judgment was entered in favor of the State of Iowa and against the American Express Company and R. M. Coffin. That the supreme court of Iowa is the highest court of law or equity of said State of Iowa, in which a decision could be had in said cause. That a copy of said decision is hereto annexed and marked Exhibit F. and made a part hereof. That the said four packages were received by the American Express Company, as a common carrier,
26 at Rock Island, Illinois, to be transported by it from Rock Island to Tama, Iowa, and were addressed and consigned to certain persons at Tama, Iowa, and were to be delivered to such persons upon the payment by them to the American Express Company of the sum of $3.00 upon each of said packages, in addition to the charges for the transportation thereof and the collection and return of the said sums of $3.00 to the consignors at Rock Island, Illinois. That the said four packages were transported to Tama, Iowa, and were received at the local office of the American Express Company at Tama, Iowa, and at the time they were seized, they were in the custody of R. M. Coffin, the local agent of the American Express Company at Tama, Iowa, awaiting delivery to the several consignees named.

That the said four packages did, in fact, contain intoxicating liquors, but that such fact was not known to the American Express Company, nor to its agents at Tama, Iowa.

That in said cause, and upon the hearing before the district court of Tama county, Iowa, and upon the hearing in the supreme court of Iowa, the American Express Company and R. M. Coffin claimed that sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897,

and the seizure of the said four packages and the proceeding against the same thereunder, were invalid and unconstitutional upon the ground that they were repugnant to and in contravention of the 8th section of article I of the Constitution of the United States in respect of the power to regulate commerce among the several States; and claimed the right, under said provision of the Constitution of
the United States, to carry the said four packages from the
27 State of Illinois to the State of Iowa, and there to deliver the same to the consignees named, and to collect and remit the several amounts to be collected thereupon.

That the decision of the supreme court of Iowa was in favor of the validity of sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897, and was against the right set up and claimed by the American Express Company and R. M. Coffin.

That in the record and proceedings in said cause and in the decision of the supreme court of Iowa, certain errors were committed, all of which will more fully appear by reference to an assignment of errors which is hereto annexed and marked Exhibit "G" and made a part hereof.

Wherefore your petitioners pray that you endorse hereon, an order allowing the issuing of a writ of error to remove the record of said cause to the Supreme Court of the United States for review, in accordance with the provisions of section 709 of the Revised Statutes of the United States of 1878, and that a citation may issue under the seal of the said court, directed to the said State of Iowa, as required by the rules and practice of said court.

And your petitioners will ever pray.

AMERICAN EXPRESS COMPANY,
By JAMES C. FARGO, *President.*
R. M. COFFIN.

28 STATE OF IOWA, }
County of Tama, } *ss:*

R. M. Coffin, being duly sworn, says that he is one of the petitioners above named; that he is the agent of the American Express Company at Tama, Iowa, and signed the foregoing petition; that he has read the same and the exhibits thereto attached and knows the contents thereof, and that the same is true.

R. M. COFFIN.

Sworn to before me this 25th day of April 1903.

[Notarial Seal of D. E. Goodell, Iowa.]

D. E. GOODELL,
Notary Public in and for Tama County, Ia.

Writ of error allowed May 4th 1903

DAVID J. BREWER,
Associate Justice Sup. Ct. U. S.

29 EXHIBIT "A."

Code sec. 2413—Search warrant—Seizure.—If any credible resident of any county shall, before a justice of the peace for the same county, make written information, supported by his oath or affirmation that he has reason to believe, and does believe, that any intoxicating liquor, described as particularly as may be in said information, owned or kept by any person named or described in said information as particularly as may be, and is intended by him to be sold in violation of the provisions of this chapter, said justice shall, upon finding probable cause for such information, issue his warrant of search, directed to any peace officer in the county, describing as particularly as may be the liquor and the place described in said information as the owner or keeper of said liquor, and commanding the said officer to search thoroughly said place, and to seize the said liquor with the vessels containing it, and to keep the same securely until final action be had thereon; whereupon the said peace officer to whom such warrant shall be delivered shall forthwith obey and execute, as effectually as possible, the commands of said warrant, and make return of his doings to said justice, and shall securely keep all liquors so seized by him and the vessels containing them until final action be had thereon. If the place to be searched be a dwelling house in which any family resides, and in which no tavern, eating house, grocery or other place of public resort is kept, such warrant shall not be issued unless said complaint shall, on oath or affirmation, declare before said justice that he has reason to believe and does believe that within one month next before making of said information intoxicating liquor has been in violation of this chapter, sold in said house, or in some dependency thereof, by the person accused in said information, or by his consent or permission;
30 nor unless from the facts and circumstances disclosed by such complaint, the said justice shall be of the opinion that said complaint has adequate reason for such belief.

EXHIBIT "B."

Code sec. 2414—Information for search warrant—Defects.—The information and search warrant in such case shall describe, with reasonable particularity, the place to be searched, as well as the liquors to be seized. When any liquors shall have been seized by virtue of any such warrant, the same shall not be discharged or returned to any person claiming the same by reason of any alleged insufficiency of description in the warrant of the liquor or place, but the claimant shall only have a right to be heard on the merits of the case.

EXHIBIT "C."

Code sec. 2415—Notice—Trial—Judgment—Appeal.—In the event of a seizure under said warrant, the officer shall forthwith make a return of his acts thereunder, and within forty-eight hours thereafter the justice who issued the warrant shall cause to be left at the place where said liquor was seized, if said place be a dwelling house, store or shop, posted in some conspicuous place on or about said buildings, and also to be left with or at the last known and usual place of residence of the person named or described in said information as the owner or keeper of said liquor, if he be a resident of this State, a notice, summoning such person, and all others whom it may concern, to appear before said justice at a place and time named in said notice, which time shall not be less than five nor more than fifteen days after the posting and leaving of said notices, and show cause, if any they have,
31 why said liquor together with the vessels in which the same is contained, should not be forfeited; and said notice shall, with reasonable certainty, describe said liquor and vessels, and shall state where, when and why the same were seized. At the time and place prescribed in said notice, the person named in said information, or any other person claiming an interest in said liquor and vessels, or any part thereof, may appear and show cause why the same should not be forfeited. If any person shall so appear, he shall become a party defendant in said cause, and said justice shall make a record thereof. Whether any person shall so appear or not, said justice shall, at the prescribed time, proceed to the trial of said case, and said complainants or either of them may, and upon their default the officer having such liquor in custody shall, appear before said justice and prosecute said information, and show cause why such liquor should be adjudged forfeited.

The proceeding in the trial of such case may be the same, substantially, as in cases of misdemeanor triable before justices of the peace, and if any person shall appear and be made a party defendant as herein provided, and shall make written plea that said liquor or a part thereof claimed by him, was not owned or kept with intent to be sold in violation of this chapter, such party defendant may, at his option, demand a jury to try the issue, and if, upon the evidence presented, the said justice or jury, as the case may be, shall by verdict, find that said liquor was, when seized owned or kept by any person, whether said party defendant or not, for the purpose of being sold in violation of this chapter, the said justice shall render judgment that said liquor, or said part thereof, with the vessels in which it is contained, is forfeited. If no person be made de-
32 fendant in manner aforesaid, or if judgment be in favor of all the defendants who appear and are made such, then the costs of the proceeding shall be paid as in ordinary criminal prose-

cutions where the prosecution fails. If the judgment shall be against only one party defendant appearing as aforesaid, he shall be adjudged to pay all the costs of proceedings in the seizure and detention of the liquor claimed by him, and trial, up to the time of judgment. But if such judgment shall be against more than one party defendant claiming distinct interests in said liquor, then the costs of said proceedings and trial shall be, according to the discretion of said justice, equitably apportioned among said defendants, and execution shall be issued on said judgments against said defendants, for the amount of the costs so adjudged against them. Any person appearing and becoming party defendant as aforesaid may appeal from said judgment of forfeiture, as to the whole or any part of said liquor and vessels claimed by him and so adjudged forfeited, to the district court, as in ordinary cases of misdemeanor.

33 EXHIBIT "D."

Code sec. 2416—Destruction of liquor and vessels.—Whenever it shall be finally decided that liquor seized as aforesaid is forfeited, the court rendering final judgment of forfeiture shall issue to the officer having said liquors in custody, or to some other peace officer, a written order, directing him forthwith to destroy said liquor and vessels containing the same, and immediately thereafter to make return of said order to the court whence issued, with his doings indorsed thereon. Whenever it shall be finally decided that any liquor so seized is not liable to forfeiture, the court by whom such final decision shall be rendered shall issue a written order to the officer having the same in custody, or to some other peace officer, to restore said liquor with the vessels containing the same, to the place where it was seized, as nearly as may be, or to the person entitled to receive it, which order the officer shall obey, and make return thereon to the court of his acts thereunder, and the costs of the proceeding in such case attending the restoration, as also the costs attending the destruction of such liquor in case of forfeiture, shall be taxed and paid in the same manner as is provided in case of ordinary criminal prosecutions where the prosecution fails.

34 "EXHIBIT E."

In the Supreme Court of Iowa, May Term, A. D. 1901.

THE STATE OF IOWA, Appellant,
vs.
THE AMERICAN EXPRESS COMPANY and R. M. COFFIN, Appellees. } At Law.

Appeal from Tama district court, Hon. G. W. Burnham, judge.

C. B. Bradshaw for appellant.
J. W. Willett for appellee.

Appellant's Abstract.

35 On the 31st day of March, 1900, an information was filed in the office of A. W. Guernsey, a justice of the peace, in Tama township, Tama county, Iowa, charging the defendants above named with keeping intoxicating liquors in said county with intent to sell the same in violation of law, which information is in words and figures as follows:

STATE OF IOWA, *Tama County,* } *ss:*

I, B. A. Hall, being duly affirmed, depose and say that I am a resident of Tama county, Iowa; that at the time the original information was filed in this cause, I had reason to believe, and did believe, and still believe that certain intoxicating liquors, to-wit: whisky, brandy and wine were at the time said information was filed, kept in the office of the American Express Company at the city of Tama, in said county of Tama, which office is kept in the building occupied by the defendant R. M. Coffin as a drug store in said city of Tama, which intoxicating liquors were at the time aforesaid kept by said American Express Co. and the said defendants Coffin and Crossman, as its agents, in packages addressed to S. L. Hartsock, Geo. Everhard, Burt Anderson, W. E. Pauley and other persons to this informant unknown, which intoxicating liquors were at the time aforesaid, by the American Express Company and its Iowa agents, kept and intended by said defendants and each of them to be sold in violation of the laws of Iowa.

B. A. HALL.

Duly affirmed before A. W. Guernsey, J. P.

Thereupon the said justice of the peace issued a warrant to W. T. Hollen, a constable in aforesaid county, directing him to
36 search the premises described in said information, and to seize the packages and liquors with the vessels containing them, and to keep the same until final action thereon.

The said constable on the 2nd day of April, 1900, returned said warrant into court showing that pursuant thereto he had searched the premises, found and seized four packages of intoxicating liquors in the office of the American Express Company, in Tama, Iowa, in the building occupied by R. M. Coffin as a drug store and as the office of said American Express Company; and that he then held said liquors subject to the further order of the court.

Due notice having been given by the said justice to the defendants herein of the seizure of said intoxicating liquors, and the said defendants having been duly summoned to appear before the said justice on the 9th day of April, 1900, to show cause why the liquors and vessels seized as aforesaid should not be forfeited and condemned, the cause came on for hearing before said justice on the 9th day of April, 1900, C. B. Bradshaw appearing as attorney for the plaintiff and Willett & Huber appearing as attorneys for the defendants.

The defendants at the same time filed in said cause the following

Answer.

First count.

Now come the defendants in the above entitled cause and for answer to the substituted information filed herein, deny each and every allegation and statement thereof, except as may be hereinafter admitted or otherwise denied.

37 Defendants admit that said R. M. Coffin is the agent of said American Express Company, at Tama, Tama county, Iowa.

Defendants admit that the prosecuting witness, B. A. Hall, on the 2nd day of April, A. D. 1900 was and still is a resident of Tama county, Iowa.

Second count.

Further answering said substituted information, these defendants state that The American Express Company, one of the defendants herein is a foreign corporation organized under the laws of the State of New York, for pecuniary profit with its principal office located in New York city, N. Y.

That the defendant R. M. Coffin is the local agent at Tama, Tama county, Iowa for his co-defendant American Express Company, and has been such agent for many years last past.

That the defendant W. P. Crossman is an employé of his co-

defendant R. M. Coffin at said Tama, and clerks in the drug store of said Coffin thereat, and sometimes in the absence of said Coffin handles the express of the defendant American Express Company thereat.

That the defendant American Express Company, the corporation aforesaid, is a common carrier, and as such common carrier is engaged in the rapid transportation of merchandise, personal property and other articles and commodities, in the State of Iowa, and interstate between the several States.

That on or about the 29th day of March, 1900, the defendant American Express Company, as a common carrier received from John Cullom & Co., consignors at the city of Rock Island in the State of Illinois, four boxes said to contain merchandise,
38 marked by consignors direct to the several consignees as follows to wit: One box to "W. E. Pauley, Tama, Iowa," one box to "Geo. Everhart, Tama, Iowa," one box to "Link Hartsock, Tama, Iowa," and one box to "Bert Anderson, Tama, Iowa," and said boxes and each of them were then and there billed by the defendant express company at Rock Island, Illinois, for said consignors at their request direct to said several consignees at Tama, Iowa, C. O. D. $3 00 on each package not including the cost of transportation.

That said packages or boxes and each of them were securely nailed and packed and neither of these defendants have any knowledge or information of what they or either of them contain.

That said packages or boxes and each of them were received by the defendant American Express Company as common carriers on said 29th day of March, 1900, from said consignors at said Rock Island, Illinois, for transportation interstate from said Rock Island, Illinois to said Tama, Iowa, consigned to the said several parties, W. E. Pauley, B. Anderson, Link Hartsock and G. Everhart, $3.00 C. O. D. to each, at Tama, Iowa, with express charges of forty-five cents on each package. That said packages were received at Tama, Iowa, March 31, 1900, by the defendant R. M. Coffin as the agent of the defendant express company, from said company, and were by said Coffin as such agent taken to his place of business, in his drug store in said Tama, Iowa, which place is the local office of the defendant American Express Company at said Tama, and said packages and each of them were still in transit, in the possession of the defendant express company and their agent the defendant R. M. Coffin, acting for said company at their said office in Tama, Iowa, and
39 had never been delivered to consignees or either of them at the time they were seized by the officer in this proceeding and same have never been delivered to consignees or either of them.

That the defendant W. P. Crossman has not now and never had any interest in the property in controversy, nor was the same, or any of it, ever in his possession or under his control, except that same may have been left in the office of the defendant express company at Tama, Iowa, at some time while he the defendant W. P. Crossman was in charge of the store wherein said office is located, as the

drug clerk and employee of the defendant Coffin. That the defendant American Express Company, as a common carrier, has a lien for the express or transportation of said property from Rock Island, Illinois, to its office in Tama, Iowa, of forty-five cents on each box or package in controversy, no part of which has ever been paid.

That there are charges against each package or box in controversy in the sum of $3.00 each as a C. O. D. which the defendant express company is obligated to consignors to collect, from the several consignees, before delivering same or either of them, no part of which C. O. D. charges has ever been paid.

That these defendants nor either of them have any interest in the sale of the merchandise or contents of said several boxes, but the sole and only interest of defendants or either of them in the premises is in the performance of the duties, in the exercise of the privileges allowed them by law as common carriers engaged in transportation in the States of Illinois and Iowa, and other States interstate, and the property in controversy is yet in transit interstate, never having been delivered to consignees, and none of said property is kept
40 by defendants or either of them with intent to sell the same, and the seizure herein made is unlawful.

Wherefore defendants ask that the said property in controversy and each item or package thereof may be ordered returned to the defendant American Express Company or its agent at the local office of said company in Tama, Iowa, where same was seized; that the lien of the defendant express company of forty-five cents per package on each package herein for transportation of same may be protected; that the obligation of the defendant express company to collect and pay the consignors of said property $3.00 per package before delivery to consignees may be respected and protected, and that the costs herein may be taxed to the prosecuting complainant, and that these defendants may be dismissed without costs with judgment accordingly.

WILLETT & HUBER,
Attorneys for Defendants.

Thereupon the plaintiff and defendants having agreed upon the facts filed the following stipulation as to the facts to be considered on the hearing:

Stipulation.

It is hereby stipulated by the parties to the above entitled cause,
1st. That the defendant, The American Express Company, is a foreign corporation as alleged in defendants' answer.

2nd. That said defendant express company has not nor has it at any time had or held a permit or other authority to sell intoxicating liquors in Tama county, Iowa.

41 3rd. That the defendant R. M. Coffin is a registered pharmacist and holds a permit to sell intoxicating liquors for the purposes authorized by the laws of Iowa, but that he makes no

claim that such permit authorizes any delivery of intoxicating liquors by him as agent of said express company which may be received by him as the agent of his company, and consigned to parties who may call for the same at the office of said company, nor is the delivery of such liquors by him for the said express company in any wise conducted under the regulations and laws prescribed by the State of Iowa for the sale of intoxicating liquors by him as a registered pharmacist and permit holder.

4. That at the time the packages described in defendants' answer, which are the same packages seized under the warrant of seizure in this cause, were received for transportation by said express company, neither the defendant express company nor its agents or employees knew or had any knowledge that the said packages contained intoxicating liquors, nor did said express company, its employees or either of the other defendants Coffin and Crossman know or have any knowledge of the actual contents of said packages seized herein until after the seizure thereof.

5. It is conceded that said packages and each of them do contain intoxicating liquors of not less than one quart each, and that such liquors are in the original packages in which they were delivered to the defendant express company as a common carrier in the State of Illinois for transportation to Tama, Iowa.

6. That the charges of three dollars on each package, mentioned in defendants' answer is no part of the charges for transportation and no part of the compensation of said defendant express company for transporting the same, and that the said sum of three dollars is the purchase price of the goods contained in each package respectively, and that said express company is bound under its contract to collect for the shipper of said packages the said sum of three dollars on each package before delivering the same to the consignee and to transmit to said shipper the sum of three dollars on each package.

42

7. That the place of delivery of said packages to consignees is at the office of the said American Express Company in Tama, Tama county, Iowa, of which office the defendant R. M. Coffin is in charge as agent and at the time of the seizure herein none of said packages had been delivered to the consignees or either of them. That said packages and each of them were shipped by consignors to consignees on their orders, given to the traveling agent of consignors at Tama, Iowa, and by him sent in to consignors subject to their approval and shipment thereunder.

8. That in case the hearing of this cause should be on demurrer of plaintiff to defendants' answer, each of the above admitted facts shall be considered in connection with the answer as fully and have the same effect in law as if alleged in said answer or made a part thereof.

C. B. BRADSHAW,
Attorney for Plaintiff.
WILLETT & HUBER,
Attorneys for Defendants.

Thereupon the said cause was submitted on the information, answer of defendants and the stipulation aforesaid, and by con-
43 sent of parties the court took the said cause and its submission under advisement until April 12, 1900, at which time the court rendered its decision and found that the packages of liquor seized under the warrant issued and in the custody of the officer, were each and all kept by the said defendants, The American Express Company and R. M. Coffin, for the purpose of being sold in violation of law, and rendered judgment that the said liquors and the vessels containing the same and now in the custody of the officer, be forfeited, and rendered judgment against said defendants for the costs of the proceeding, to all of which orders and judgments the defendants severally excepted and gave notice of appeal to the district court.

And afterwards, to-wit, on the 16th day of April, 1900, the defendants duly perfected their appeal to the district court of Tama county, Iowa.

Afterwards, to-wit, the defendants filed in the district court an amendment to their answer in words and figures following:

Amendment to Answer.

The defendants American Express Company and R. M. Coffin amend the second count of their answer herein and aver, that under the facts in this case as shown by the pleadings and stipulation on file, a Federal question arises under the Constitution of the United States, and laws of Congress, which they now affirmatively plead to-wit: the rights of the defendants engaged in interstate commerce as common carriers, and of the power of the State of Iowa over goods in transit from one State to another; and under the same the defendants insist that the liquors and packages in controversy
44 are not subject to seizure and destruction as claimed by the prosecution.

Wherefore defendants demand the return of the property seized herein and judgment for costs.

J. W. WILLETT,
Attorney for Defendants.

And afterwards, to-wit, on the 16th day of January, 1901, the said cause was fully submitted to the said district court, both parties waiving a jury, and the said cause was submitted on the information and answer of defendants and the written stipulation herein before set out, no other evidence being offered or introduced by either party, the stipulation aforesaid being all the evidence offered or received on the trial and submission of said cause.

Whereupon by consent of parties, the said cause was to be decided in vacation, and judgment entered as of the last day of the December term of the district court for the years 1900.

And afterward, to-wit, on the — day of February, 1901, the Honorable G. W. Burnham, judge of said district court, filed with the clerk of said court his decision of said cause in writing, finding that the said liquors were wrongfully seized and ordered that they be returned to the express company and that the State pay the costs of this prosecution, to all of which orders and judgment the State excepted, which exceptions were duly entered of record; that the said judgment was entered and rendered as of the last day of the December term 1900, to-wit, January 16th, 1901.

And afterward, to-wit, on the 23d day of March, 1901, the plaintiff perfected its appeal from the said judgment by duly serving upon the said defendants and their attorneys in the court below a
45 notice of appeal to the supreme court of Iowa, and by serving upon the clerk of the district court of Tama county, Iowa, a notice of such appeal to the supreme court of Iowa, and by securing to his satisfaction the fees required or that may be required for any record or transcript in said cause.

C. B. BRADSHAW,
Attorney for Appellant.

The cost of printing this abstract is $12.00.

I hereby certify that I am the attorney for appellant in this appeal and that the cost of printing this abstract is as above stated.

C. B. BRADSHAW,
Attorney for Appellant.

Assignment of Errors.

The appellant, while not conceding that assignments of errors are required for a review of this cause on appeal, for the purpose of avoiding controversy as to such question, assigns the following errors:

1. The court erred in holding that the liquors seized were exempt from seizure under the interstate commerce provision of the Federal Constitution.
2. The court erred in its finding and judgment that the liquors were wrongfully seized.
3. The court erred in ordering the liquors seized to be returned to the defendant express company.
4. The court erred in rendering judgment against the plaintiff for costs of the proceeding.

C. B. BRADSHAW,
Attorney for Appellant.

46

EXHIBIT F.

Filed Oct. 30th, 1902.

In the Supreme Court of Iowa.

STATE OF IOWA, Appellant,
vs.
AMERICAN EXPRESS COMPANY, R. M. COFFIN, and Certain Intoxicating Liquors. } # 21661.

Certain intoxicating liquors in the possession of the defendant Coffin as agent for the American Express Company at Tama were seized, and by judgment of a justice of the peace were condemned and their destruction ordered, on the ground that they were being kept by defendants to be sold in violation of law.

On appeal to the district court the liquors were ordered to be returned to the express company on the finding that said liquors were wrongfully seized, and from this judgment the State appeals.

Charles W. Mullan, attorney-general and C. B. Bradshaw, Charles A. Van Vleck, ass't att'y gen. for appellant.

J. W. Willett and J. C. Cook, for appellee.

Per Curiam:

The facts out of which this controversy arose were as follows: Certain packages of intoxicating liquors, each containing one quart, were, in pursuance of orders received by John Cullom Co., dealer- in intoxicating liquors at Rock Island, Illinois, delivered to the
47 defendant express company to be transported to Tama and there to be delivered to the consignees named, on the payment of $3.00 and express charges on each package so shipped. The defendant express company had no knowledge that such packages contained intoxicating liquors, if that fact is material, and transported them to Tama, where they then were seized in the possession of the defendant Coffin as its agent. The simple question is whether the delivery of these packages to consignee- would have constituted sales of the liquors at Tama, for if so, such liquors were held for the purpose of illegal sale in the State and were subject to forfeiture; or whether, on the other hand, the sales were made at Rock Island, and the liquors were in the possession of the defendant company merely for transportation and delivery to the consignees in pursuance of such completed sales, for under this state of facts the liquors were in possession of the express company in the discharge of its functions in carrying on inter-state commerce; and could not be seized under the State law, unless it be found that in accepting the goods, and attempting to collect the purchase price, the company

was not acting as a carrier simply, but was undertaking the performance of an act prohibited by our law.

If the act of the carrier in assuming to collect the purchase price be considered as a sale of the goods, or if it be found that such transaction on its part is not freed from the operation of our laws, by reason of being but a lawful step incident to inter-state commerce, then the liquors should have been condemned.

Whether a C. O. D. transaction should be deemed an absolute sale on the part of the vendor with a provision for withholding delivery until actual payment, so as to preserve a lien, for the price, or as an executory contract of sale which is not completed until actual delivery to the buyer, has been the subject of much diversity of opinion. See cases cited at pp. 300 and 301 of 17 Am. & Eng. Ency. of Law, 2nd edition.

48 If the question were *res intergra* in this State, a majority of the court, as now constituted, would be inclined to the view that under such a shipment, the carrier is the agent of the buyer for the purposes of transportation, and of the seller for the purpose of retention of possession and collection of the purchase price, and that as a necessary corollary title passes to the buyer on delivery to the carrier.

But the question is foreclosed in State *vs.* United States Express Co. 70 Ia. 271, wherein it is said: "They (the liquors) were carried by the express company and held by it for delivery to the parties on payment of the purchase price. They were therefore the property of the consignors and the express company was the agent of the consignors with authority to transfer the title to the property upon payment of the purchase price. The property was therefore contraband &c." It was also held in that case that want of knowledge on the part of the express company of the character of the goods was entirely immaterial. The opinion, which was written by Judge Rothrock, has stood unquestioned until this case, and several others like it, recently reached this court and would not no doubt at this time be challenged but for the opinion in Rhodes *vs.* Iowa, 170 U. S. 412. That case in no manner militates against the conclusion reached in the express company case for the same court which announced that opinion held in O'Neill *vs.* Vermont, 144 U. S. 323; 36 L. Ed. p. 450 that the determination of the character of a C. O. D. transaction did not involve a Federal question and sustained not only a condemnation of liquors under precisely the same state of facts as appear in the case before us now, but also affirmed a judgment of conviction against an agent connected with the sale.

Our 70 Iowa case is not without support in other jurisdictions. See State *vs.* O'Neill, 58 Vt. 140; State *vs.* Goss 6 Atl. Rep. 829; People *vs.* Shriver 23 Fed. 134; U. S. *vs.* Cline 26 Fed. 515;
49 U. S. *vs.* Chavallier, 107 Fed. 434; Baker *vs.* Bonecuauld, 1 Daly N. Y. 24; State *vs.* Wingfield, 115 Mo. 428; Crabb *vs.* State, 15 S. E. Rep. (Ga.) 455; Dunn *vs.* State 8 S. E. Rep. Ga. 809; State *vs.* Four Jugs, 2 Atl. Rep. 586; Wagner *vs.* Hallack, 3 Colo. 176.

We are now asked to change the rule to the end that our prohibitory liquor laws, passed in the exercise of the police power of the State, may be rendered less irksome, and express companies be allowed not only to transport liquors into the State, which of course they may do—but also to collect the purchase price for the vendors. The baneful effect of such a decision is easily imagined. Every one knows that an overruling of the express company case would be followed by the establishment in every community of places for the sale of intoxicants which would be quite harmful and free from regulation and restraint as were the "original package saloons" before the enactment of the Wilson bill.

The purpose and intent of that act is quite generally understood. That is was not intended to interfere with legitimate acts of transportation of property between the States, nor to prevent a resident of this State from shipping into it from another State for his own consumption and use, is freely admitted. But it is just as clear to our minds that it was not the intention of Congress to authorize a carrier to engage not only in the transportation of property, but to act as an agent for the seller in completing the sale and collecting the purchase price.

Supported as we are in our position by respectable authority, *forefited* by the thought that we are upholding the policy of this State toward the traffic in intoxicants, and fully believing that the doctrine announced while not supported perhaps by the weight of judicial authority, is one which will do much good and no harm, we are constrained to adhere to it, on the broad ground of *stare decisis*, which is one of the safeguards of our judicial system.

This conclusion relieves us from the necessity of considering the other question as to whether or not the goods are protected by reason of the commerce clause of the Federal Constitution. See the O'Neill case *supra*. However, some of the members of the court would reach the same result, had it been found that the title to the property passed when delivered to the carrier in the State of Illinois. Conceding that to be true, they are of the opinion that the transaction was not in any fair sense interstate commerce, protected by the Constitution of the United States from State regulation.

The express company in effect engaged in the business of selling through agents in this State at retail, intoxicating liquors, shipped by it for that purpose from the State of Illinois, This was a mere device, as it seems to us, to evade the police laws of this Commonwealth; and that the doctrine of "original packages," or of freedom of interstate commerce, does not apply to a business of this character.

In assuming to collect the purchase price, and to hold possession until the price was paid, it was in no proper sense engaged in interstate commerce. Others of the court are of a contrary opinion; they think the collection of the purchase price was a mere incident to the transportation of the goods, and that the case should be ruled by Rhodes *vs.* Iowa, *supra*, in the event we are constrained to overrule the express company case in 70 Iowa. None of us, as be-

fore observed, are disposed to question that decision at this time, and it follows that the judgment of the district court should be and is, reversed.

51 In the Supreme Court of Iowa, October Term, 1902.

Now on this 30th, day of October 1902 the following among other proceedings were had towit:

STATE OF IOWA, Appellant,
vs.
AMERICAN EXPRESS Co., R. M. COFFIN, and CERTAIN Intoxicating Liquors. } #21661.

Appeal from Tama district court.

In this cause the court being fully advised in the premises, file their written opinion reversing the judgment of the dist. court.

It is therefore considered by the court that the judgment of the court below be and it is hereby reversed and the cause is remanded for further proceedings (if any be required) in the dist. court in harmony with the opinion of this court and that a writ of *procedendo* issue accordingly.

It is further considered by the court that the appellee pay the costs of this appeal, taxed at $55.75 and that execution issue therefor.

52 STATE OF IOWA, *ss:*

I, Jno. C. Crockett, clerk of the supreme court of the State of Iowa, do hereby certify that the above and foregoing is a true, correct and complete transcript of the record, and opinion of said supreme court and the judgment entry in the case of The State of Iowa *vs.* The American Express Company, R. M. Coffin and Certain Intoxicating Liquors, as the same was submitted to said court and opinion handed down and filed on the 30th day of October 1902, as full and complete as the same now appears and remains of record on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at Des Moines, Iowa this 25th day of April A. D. 1903.

[Seal of the Supreme Court of Iowa.]

JNO. C. CROCKETT,
Clerk of the Supreme Court.

STATE OF IOWA, *ss:*

I, Charles A. Bishop, chief justice of the supreme court of the State of Iowa, hereby certify that the foregoing signature is genuine and

that the said Jno. C. Crockett is the duly elected and qualified clerk of the supreme court of the State of Iowa and the custodian of the books and records pertaining to said court. Done at Des Moines Iowa this 25th day of April A. D. 1903.

[Seal of the Supreme Court of Iowa.]

CHARLES A. BISHOP,
Chief Justice of the Supreme Court of Iowa.

53

EXHIBIT "G."

The Supreme Court of the United States.

THE AMERICAN EXPRESS COMPANY and J. M. Coffin and Certain Intoxicating Liquors, Plaintiffs in Error, *against* THE STATE OF IOWA, Defendant in Error.	Error to the Supreme Court of the State of Iowa.

Assignment of Errors.

And now come the plaintiffs in error herein and file the following assignment of errors upon which they will rely in the Supreme Court of the United States in the above entitled case.

There is manifest error in the record and proceedings in said case and in the decision of the supreme court of Iowa, as follows:

I.

The supreme court of Iowa erred in that it refused to find that sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897 and the seizure of the four packages containing intoxicating liquors and the proceedings against the same under the said sections of the Code of Iowa, were and are repugnant to the eighth section of article I of the Constitution of the United States, in respect of the power to regulate commerce among the several States.

54

II.

The supreme court of Iowa erred in that it refused to find that the four packages seized and condemned, were not subject to seizure and confiscation under sections 2413, 2414, 2415 and 2416, of the Code of Iowa of 1897, for the reason that said four packages were delivered to the American Express Company, as a carrier, at Rock Island in the State of Illinois, to be transported by said company from Rock Island in the State of Illinois to Tama in the State of Iowa, and there delivered to consignees named, and were, at the time of such seizure, still in the possession of the American Express

Company at its local office at Tama, Iowa, in the original packages in which the same were shipped from the State of Illinois, awaiting delivery to the consignees.

III.

The supreme court of the State of Iowa erred in that it refused to find that the four packages containing intoxicating liquors, which were seized and condemned, were exempt from such seizure and confiscation under the eighth section of article I of the Constitution of the United States, for the reason that said four packages were delivered to the American Express Company, as a carrier, at Rock Island in the State of Illinois, to be transported by said company from Rock Island in the State of Illinois to Tama in the State of Iowa, and there delivered to consignees named, and were, at the time of such seizure, still in the possession of the American Express Company, at its local office at Tama, Iowa, in the original packages in which the same were shipped from the State of Illinois, awaiting delivery to the consignees.

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IV.

The supreme court of Iowa erred in holding that the four packages containing intoxicating liquors, which were seized and condemned, were kept by the American Express Company to be sold, and were therefore, subject to seizure and confiscation under sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897, for the reason that said four packages were held by the American Express Company, as a carrier only, the same having been received by said company at Rock Island in the State of Illinois, to be transported by said company from Rock Island, in the State of Illinois, to Tama, in the State of Iowa, and there delivered to consignees named, upon the payment by them to the said company of the sum of three dollars upon each of said packages in addition to the charges for the transportation thereof and that said four packages, at the time of such seizure, were still in the possession of the American Express Company as such carrier, at its local office at Tama, Iowa, awaiting delivery to the consignees.

V.

The supreme court of Iowa erred in holding that, at the time the said four packages were seized, the American Express Company was not acting as a carrier simply, but was undertaking the performance of an act prohibited by law.

VI.

The supreme court of Iowa erred in holding that, in receiving the said four packages so to be transported, the American Express

Company was an agent of the consignors with authority to
56 transfer the title to the said four packages upon payment of the purchase price.

VII.

The supreme court of Iowa erred in holding that, under the circumstances of said case, the American Express Company held the said four packages for sale within the said State of Iowa, or that a delivery thereof, within said State of Iowa, by the American Express Company, upon receipt of the said sums, in accordance with the terms of the said shipment, would have been a sale within said State of Iowa, it being conceded that the American Express Company and its agents had no knowledge that the said four packages contained intoxicating liquors.

VIII.

The supreme court of Iowa erred in holding that the absence of knowledge on the part of the American Express Company and its agents that the said four packages contained intoxicating liquors was immaterial, upon the question of the liability of the said company, to the judgment rendered.

IX.

The supreme court of Iowa erred in not holding that the seizure of the four packages containing intoxicating liquors and the proceeding against the same under sections 2413, 2414, 2415 and 2416, of the Code of Iowa of 1897, were in violation of the rights of the American Express Company under the eighth section of
57 article I of the Constitution of the United States, in respect of the power to regulate commerce among the several States.

X.

The supreme court of Iowa erred in holding that no Federal question was involved in this case.

XI.

The supreme court of Iowa erred in not ordering the said four packages containing intoxicating liquors, which were seized and condemned, to be returned to the American Express Company and R. M. Coffin.

XII.

The supreme court of Iowa erred in not rendering judgment against the State of Iowa for the cost of the proceeding prosecuted against the four packages seized and condemned.

XIII.

The supreme court of Iowa erred in ordering judgment in favor of the State of Iowa and against the American Express Company and R. M. Coffin.

J. W. WILLETT,
Attorney for Plaintiffs in Error.

58 [Endorsed:] In the supreme court of Iowa The State of Iowa, appellant, against The American Express Company and R. M. Coffin, appellees Petition for writ of error. J. W. Willett attorney for appellees Filed Jun- 10 1903 Jno. C. Crockett clerk supreme court.

59 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Iowa, appellant, and The American Express Company, R. M. Coffin, and Certain Intoxicating Liquors, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the
60 Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said The American Express Company and R. M. Coffin as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30

days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of May, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Filed Jun- 10, 1903. Jno. C. Crockett, clerk supreme court.

61 UNITED STATES OF AMERICA, *ss:*

To the State of Iowa, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein The American Express Company and R. M. Coffin are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this 29th day of May, in the year of our Lord one thousand nine hundred and three.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

62 On this 10th day of June, in the year of our Lord one thousand nine hundred and three, personally appeared before me, the subscriber, James W. Willett, and makes oath that he delivered a true copy of the within citation to Charles W. Mullan, attorney general of the State of Iowa, attorney for the defendant in error, The State of Iowa, and Jno. C. Crockett, clerk of the supreme court of Iowa.

JAMES W. WILLETT.

Sworn to and subscribed the 10th day of June, A. D. 1903.

[Notarial Seal of Rufus H. Harvey, Iowa.]

RUFUS H. HARVEY,
Notary Public.

Service of the within and foregoing citation is hereby accepted by the undersigned at Des Moines Iowa this 10th. day of June A. D. 1903 and copy thereof received.

CHAS. W. MULLAN,
Attorney General of the State of Iowa,
Attorney for Defendant in Error.
JNO. C. CROCKETT,
Clerk Supreme Court of Iowa.
ALBERT B. CUMMINS,
Governor of the State of Iowa.

[Endorsed:] Filed Jun- 10 1903. Jno. C. Crockett, clerk supreme court.

63 In the Supreme Court of Iowa.

THE AMERICAN EXPRESS COMPANY and R. M. Coffin and Certain Intoxicating Liquors, Plaintiffs in Error,
against
THE STATE OF IOWA, Defendant in Error.
} Return of Clerk on Writ of Error.

THE UNITED STATES OF AMERICA, *State of Iowa,* } ss:

I, Jno. C. Crockett, clerk of the supreme court of Iowa, in pursuance of the command of the writ of error in the above entitled cause to which this certificate is attached, do hereby certify and return that the above and foregoing is a true and correct transcript of the record, opinion, and final judgment of this court, in the case of The American Express Company, and R. M. Coffin, and Certain Intoxicating Liquors plaintiffs in error, against The State of Iowa defendant in error, as full true and complete as the same are now of record, and on file in my office.

I further certify that the assignment of errors, bond, petition for allowance of writ of error, and citation with return of service and acceptance thereon, are hereto attached in original form, true and correct copies of same being retained on file in this office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court this 10th day of June A. D. 1903.

[Seal of the Supreme Court of Iowa.]

JNO. C. CROCKETT,
Clerk Supreme Court of Iowa.

Endorsed on cover: File No. 18,985. Iowa supreme court. Term No. 67. The American Express Company & R. M. Coffin, plaintiffs in error, *vs.* The State of Iowa. Filed June 26", 1903.